

IDEM Statement on LSA #06-501 Date Extension for Compliance Deadlines for CAFOs

Overview

The Indiana Department of Environmental Management (IDEM) proposes to amend rule language at 327 IAC 5-4-3 concerning the individual National Pollutant Discharge Elimination System (NPDES) permit and 327 IAC 15-15 concerning a NPDES general permit for concentrated animal feeding operations (CAFOs) to extend some compliance dates.

Reason(s) for the Rule

Under the Clean Water Act, concentrated animal feeding operations (CAFOs) are point sources subject to the National Pollutant Discharge Elimination System (NPDES) permit process. This requirement is found in the federal regulations at 40 CFR 122.23(a). The term “CAFO” is defined in 40 CFR 122. This language has been adopted in Indiana and is found in the Indiana Administrative Code at 327 IAC 5-4-3 concerning special NPDES programs. On February 28, 2005, the Federal Circuit Court of Appeals, Second Circuit, in *Waterkeeper Alliance, et al v. EPA*, vacated the requirement to apply for a permit. The United States Environmental Protection Agency (EPA) was ordered by the court to amend the federal regulation based on the court’s decision. On October 31, 2005, EPA published a notice in the Federal Register (70 FR 62275) proposing to extend certain deadlines contained in the federal regulation while rule revisions required by the court are developed. In order for the Indiana rules to be consistent with EPA’s stated intention to amend the federal regulations and extend the deadline, Indiana is delaying the dates for some CAFOs to submit information to become covered under the Indiana NPDES program. **On August 9, 2006, the Indiana Water Pollution Control Board (board) final adopted #05-322 that contained changes to conform with EPA’s Concentrated Animal Feeding Operations rule at 70 FR 62275. IDEM is concerned that EPA may not meet the July 31, 2007, deadline for publishing a final rulemaking and will extend the deadline in the future. However, IDEM will not ask the board to consider final adoption of this rule until EPA indicates it is extending the federal deadline.**

The purpose of this rulemaking is to allow IDEM to meet the lengthy procedural requirements of Indiana law regarding rule promulgation and to put IDEM in a position to quickly adopt changes and/or extensions that EPA makes to the federal regulation deadline.

The amended rules will be consistent with federal regulations.

IDEM Contact

Additional information regarding this rulemaking action can be obtained from Lynn West, Rules, Outreach and Planning Section, Office of Land Quality, (317) 232-3593 or (800) 451-6027 (in Indiana).

